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## Fax Cover Letter

Please deliver the following pages to MR. CHARLES S. BRANTLEY, OFFICE  
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## Message

Please forward to Mr. Charles  
Brantley - Office of Petitions

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CERTIFICATE OF FACSIMILE - 37 CFR 1.8(a)	
I hereby certify that this correspondence has been transmitted by facsimile to: Commissioner for Patents - Office of Petitions, Attention Charles Steven Brantley, Petitions Examiner, USPTO at Fax Number 1 571 273 8300.	
Date of Deposit: <u>11-23-2005</u>	By: <u>Chris Fankham</u>

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
IN RE APPLICATION OF  
Leonard Sadjadi

DOCKET NO. 2065JB.37332

SERIAL NO.: 09/736,354

EXAMINER: La, Anh V.

FILED: 12/14/2000

GROUP UNIT: 2636

TITLE: Lighted Status Indicator Corresponding  
to the Positions of Circuit Breaker, Switch or Fuse

**CO-ASSIGNEE MICRIN'S REQUEST FOR RECONSIDERATION  
OF THE NOVEMBER 18, 2005 DECISION OF THE OFFICE OF PETITIONS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

I hereby authorize the Commissioner to charge any required fee associated with this Response to Bracewell & Giuliani LLP, Deposit Account No. 50-0259 (2065JB.37332).

In response to the November 18, 2005 Decision from the Office of Petitions granting L.S. Unico, Inc.'s ("UNICO") Petition under 37 CFR 1.181 Withdraw Holding of Abandonment Under 37 CFR § 1.181(a) in the above-style application, Applicant and Co-Assignee Micrin Technologies Corporation ("MICRIN") respectfully requests that the Solicitor reconsider the decision and deny UNICO's.

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### STATEMENT OF THE FACTS

Inventor Leonard Sadjadi granted power of attorney to James E. Bradley. The rights in the invention disclosed in U.S. Patent Application Serial No. 09/736,354, the above-styled application, were assigned by Inventor Leonard Sadjadi such that MICRIN and UNICO were each Fifty Percent (50%) co-owners of the invention. The assignment was recorded with the USPTO on December 14, 2000, and is found on Reel/Frame No.: 011366/0447. UNICO attempted to revoke the power of attorney with a new power of attorney that accompanied an Amendment and Response received by the USPTO on October 17, 2003 (hereinafter "the 10/17/2003 Amendments"). The new power of attorney was only signed by a representative (Leonard Sadjadi) for UNICO. UNICO's new power of attorney granted power of attorney for UNICO to Roger Chauza and Mark Handley (hereinafter "UNICO's Attorneys").

MICRIN, a co-owner and partial assignee, did not grant power of attorney to UNICO's Attorneys, who filed the 10/17/2003 Amendments. MICRIN also never revoked the power of attorney in James E. Bradley.

### RECONSIDERATION OF THE DECISION

The Petitions Attorney listed three situations in which a power of attorney is revoked. Unfortunately, no rule or authority was cited for the three situations. While MICRIN generally agrees with the three parties that can revoke a power of attorney, MICRIN respectfully submits that the Petitions Attorney has incorrectly applied the rules in a manner that can be contrary to the rules and threatens assignees rights.

First of all, the Petitions Attorney references 37 CFR 3.71<sup>1</sup> titled "Prosecution by Assignee," and appears to follow the language in 37 CFR 3.71(b) for situation number (2) of "All partial assignees, or all partial assignees and inventors who have not assigned their right, title and interest in the application, who together own the entire right, title and interest in the application." However, the Petitions Attorney makes no reference in the decision to 37 CFR 1.36 titled "Revocation of power of attorney; withdrawal of patent attorney or patent agent." Section (a) of 37 CFR 1.36 pertains to revocations, and Section (b) pertains to withdrawals by patent attorneys and patent agents. According to section (a) of 37 CFR 1.36:

An assignment will not of itself operate as a revocation of a power previously given, but the assignee of the entire interest of the applicant may revoke previous powers of attorney and give another power of attorney of the assignee's own selection as provided in § 1.32(b).

Accordingly, when Leonard Sadjadi assigned his rights, title and interest in the subject application to UNICO and MICRIN as fifty-percent (50%) co-owners of the invention, the power of attorney previously granted to James E. Bradley was not revoked. However, Leonard Sadjadi no longer had all the rights, title and interest in the invention and the subject application. Rather UNICO and MICRIN were the co-equal owners of the rights, titles and interests in the invention and the subject application. Section (a) of 37 CFR 1.36 also states:

Fewer than all of the applicants (or by fewer than the assignee of the entire interest of the applicant) may only revoke the power of attorney upon a showing of sufficient cause, and payment of the petition fee set forth in § 1.17(h).

When 37 CFR 1.36(a) is read with section 402.10 of the Manual of Patent Examining Procedure, the reason for not accepting revocation of power of attorneys by fewer than all the interest-holders of a patent application absent a petition showing sufficient reasons becomes evident. The acceptance of such papers results "in more than one attorney, agent, applicant, or owner prosecuting the application

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<sup>1</sup> The Examiner actually references "37 CFR 1.371." MICRIN believes that this was merely a grammatical error as there is not a 37 CFR 1.371, and rules are often shorthanded in a manner that 37 CFR 3.71 would sometimes be referred to as "Rule 1.371."

at the same time," and "each of those parties must sign all subsequent replies submitted to the Office." This is to ensure that each interest holder in the patent application is being spoken for with the USPTO.

It is important to remember when reading and applying the rules, that each inventor/applicant is generally presumed to own their invention. Accordingly, the rules are written to include statements like "all applicants." However, the rules also recognize that upon an assignment and recordation thereof with the USPTO, the assignees are the interest-holders in the patent application. Therefore, the rules include language that allow the assignee of the entire interest, the combination of partial assignees that together have the entire interest, or the all the partial assignees and the remaining inventors that have not assigned their interests, to revoke and designate powers of attorneys. Therefore, even though Petitions Examiner did not cite a rule for the statement of who can sign a revocation, MICRIN agrees in part with the Petitions Examiner's criteria.

The problem is that the rules are designed to protect the interests of the owners of the rights, titles, and interests in the patent application, whether each owner is an assignee or inventor who has not assigned away their ownership rights. However, MICRIN respectfully disagrees with the application of the Petition Examiner's rule because it vitiates and neglects the rights of assignees.

Under the Petition Examiner's application of the rules, the inventor(s) can revoke the power of attorney at any time, with or without the knowledge and consent of all the owners of the rights, titles, and interests in a patent application. For example, under the Petition Examiner's application of the rules, a disgruntled inventor who got fired from a company could revoke the power of attorney in the attorney representing the former employer company and abandon a patent application even after the inventor assigned and recorded the assignment to the invention with the USPTO. As another example, like the situation here, when there is a disagreement between the inventor and an equal co-owner of the application,<sup>2</sup> the inventor would somehow be able to unilaterally revoke the power of attorney for the

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<sup>2</sup> The Petitions Examiner notes that a petition under 37 CFR 3.71 could have been filed to prevent the inventor Leonard Sadjadi from participating in the prosecution of the subject patent application, but MICRIN respectfully submits

non-signing co-owner of the application without even filing the petition under 37 CFR 1.182 giving good and sufficient reasons why the revocation should be accepted under the provisions of MPEP 402.10.

Moreover, the Revocation and Appointment of Power of Attorney filed by UNICO on October 17, 2003 was not even signed by Leonard Sadjadi as the inventor of the subject matter in the present application, rather it was signed by Leonard Sadjadi as the representative for UNICO which acknowledged that it was only a fifty-percent (50%) co-owner of the invention. The October 17, 2003 filing included a copy of the previously recorded assignment, and a statement under 3.73(B) to establish a right for UNICO to take action on the prosecution of the application. Therefore, even the filing documents submitted and signed by Leonard Sadjadi were not purported to be on behalf of Leonard Sadjadi as the inventor and original owner, but rather to be on behalf of UNICO as only a fifty percent (50%) owner. Therefore, there should not have been any misunderstanding that only a fifty-percent (50%) owner was trying to revoke the power of attorney without the signature of the other fifty-percent (50%) owner. For the reasons above, MICRIN respectfully requests that the Petitions Examiner reconsider the November 18, 2005 Decision that the October 17, 2005 revocation was valid.

The effect of such a decision is that the USPTO would be endorsing the unilateral UNICO prosecution of the subject application that was done without the knowledge and consent of MICRIN, a fifty-percent (50%) co-owner of the subject application. As a review, MICRIN was not included in the decisions, advised of, nor asked to sign several documents affecting the scope of protection in the subject application. For example, neither MICRIN nor MICRIN's attorneys signed the 10/17/2003 Amendments. UNICO did not consult with MICRIN or MICRIN's attorneys in the preparation of 10/17/2003 Amendments. UNICO also proceeded to file (1) an Election of claims on or about June 14, 2004, for prosecution in response to the Examiner's restriction requirement; (2) an Amendment and

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that this was not possible because this requires the signatures from both UNICO and MICRIN – and Leonard Sadjadi is the "Director" and authorized representative of UNICO, as evidenced by the October 17, 2003 filing.

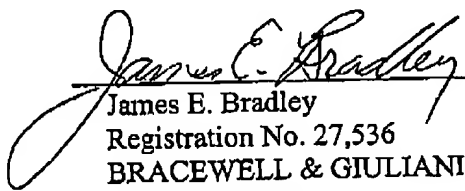
Response after final rejection on January 3, 2005, that amended the remaining claims of the above-styled application. Neither MICRIN nor MICRIN's attorneys signed either of these documents. Significantly, through the course of the filings of the 10/17/2003 Amendments, the Election, and the 1/3/2005 Amendments, every claim that was present in the subject application the last time that MICRIN was included in the prosecution of the subject application was cancelled. MICRIN, a fifty-percent (50%) co-owner was not advised or included in any of these decisions even though it never revoked the power of attorney in James E. Bradley for its interests, and UNICO never filed a petition under 37 CFR 1.182. Such a result is contrary to the very purpose of the rules requiring the signature of every ownership interest unless good and sufficient reasons are provided in a petition to the USPTO.

### CONCLUSION

For the reasons above herein, MICRIN respectfully requests that the Petitions Examiner reconsider the November 18, 2005 Decision. In the alternative, because UNICO unilaterally prosecuted the subject application without MICRIN's knowledge and to the exclusion of MICRIN, MICRIN requests that the Petitions Examiner order the Office of Publications to delay issuance for a period of time, and either (1) order UNICO to file the petition under 37 CFR 3.81; or (2) allow MICRIN to file the petition under 37 CFR 3.81 due to the hostility from UNICO toward MICRIN as exemplified by the lawsuit filed by UNICO and referred to in its petition.

Respectfully submitted,

Dated: Nov. 23, 2005

  
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